(1) that corrupt practice was committed by the respondent or his agents by causing the election handbills to be printed without bearing upon their surface the name and address of its printers and publishers, contrary to section 11(1)(c) of the Act;

(ii) that illegal practice was committed by the respondent or his agents by printing the said election handbills and/or advertisements which contained reproduction of what purports to be a ballot paper with the symbol of two political parties, contrary to section 3(m) of the said Act; and

(iii) that a recount be ordered.

I found the grounds (ii) and (iii) not proved by the petitioner. However, I found that an offence of corrupt practice by the respondent's agent Enche Kamaruddin bin Buyong was committed contrary to section 11(1)(c) of the Act.

In the circumstances and on the facts of the case and by invoking the provisions of section 28 of the said Act, I hereby certify that the respondent was duly returned.

S.D. RANI & ORS. v. JOHN PILLAI

[O.C.J. (Syed Othman J.) January 22, 1970]

[Johore Bahru — Originating Summons No. 58 of 1969]

Advocates and Solicitors — Practitioner — Whether a legal assistant practising in Johore is a "practitioner" for the purpose of the Advocates and Solicitors Ordinance, 1947, ss. 39 & 40 — Entitlement to vote.

Advocates and Solicitors — Local Bar — Election — Voting rights — Practitioners — Maintaining an office.

Interpretation — Legislation — Provision capable of two meanings — "Maintain" — Meaning of.

The applicants are advocates and solicitors employed in various firms of advocates and solicitors in Johore. They seek the determination of the question whether an advocate and solicitor employed as an assistant by a firm of advocates and solicitors in Johore is a practitioner within the meaning of section 39(2) of the Advocates and Solicitors Ordinance, 1947.

Held: a legal assistant practising in the State who is under the employ of a firm of practitioners practising and maintaining an office in a State is a practitioner for the purposes of section 39(2) of the Advocates and Solicitors Ordinance and consequently for the purpose of Part IV of the Ordinance.

Case referred to:-

(1) *Way* v. *Bishop* [1928] All E.R. Rep. 409.

ORIGINATING SUMMONS.

J. J. Puthucheary for the applicants.

L. A. J. Smith for the respondent.

Ajaib Singh (Senior Federal Counsel) and *K. A. Menon, amicus curiae.*

Syed Othman J.: In this originating summons, the applicants (Devika Rani Selvadurai, Upali Mascorale, H. L. Tennakoon and Hendon binti Haji Mohamed) who are advocates and solicitors, and employed in the various firms of advocates and solicitors in Johore, seek the determination of the question whether an advocate and solicitor employed as an assistant by a firm of advocates and solicitors in the State of Johore is a practitioner within the meaning of sub-section (2) of section 39 of the Advocates and Solicitors Ordinance, 1947 (which I shall refer to as the Ordinance).

They also seek a declaration that they should have been entitled to vote at the statutory annual general meeting of practitioners practising in the State of Johore held on 26th January, 1969.

Section 39 of the Ordinance reads: -

"39. (1) In this Part (i.e. Part IV of the Ordinance) —

'combined Bar' means all the practitioners in any two or more States who have combined under the provisions of section 41 of this Ordinance;

'Local Bar' means all the practitioners practising in a State or a combined Bar.

(2) For purposes of this Part of this Ordinance, a practitioner is deemed to be practising in a State if he or any practitioner with whom he is associated in partnership practices and maintains an office in such State:

Provided that, as regards the State of Johore, each practitioner who was a member of the Johore Bar on the 8th day of December, 1941, shall be deemed to be practising in the State of Johore whether or not he or any of his partners maintains an office in that State."

The events leading to this application are briefly as follows: The statutory annual general meeting of the Johore Bar was held on 26th January, 1969. The applicants and 36 other practitioners were present. The most senior practitioner present declined upon being called to preside over the meeting. Mr. John Pillai, the respondent and the next senior practitioner present, upon being called, presided over the meeting.

Mr. David Chelliah, an advocate and solicitor, then raised a preliminary point and requested the respondent to make a ruling on the interpretation of sub-section (2) of section 39 of the Ordinance. Mr. Chelliah interpreted the sub-section as having the effect that only principals who maintained an office in the State were eligible to vote and that assistants were not eligible to vote as they were not associated in partnership with the principals. There appears to have been some active discussion on the point raised.

The respondent then ruled that only principals who practised and maintained an office or who were associated in partnership with a practitioner who practised and maintained an office in Johore were entitled to vote but assistants were eligible to be elected to the committee.

After the ruling the meeting proceeded with its business. Office-bearers for the year were elected.

It would be interesting to note that towards the end of the meeting Mr. M. P. D. Nair requested the new committee to look into sub-section (2) of section 39 of the Ordinance with a view to amendments so that assistants had the right to vote; and that Dato' D. C. Jackson then raised the point that as assistants were not eligible to vote they should not be requested to pay their annual subscriptions.

Perhaps at this stage it would be necessary to examine as to how the respondent arrived at the ruling that only principals were eligible to vote but assistants were eligible to be elected to office.

As far as I can see, the ruling has been brought about by the wording of sub-sections (3) and (4) of section 42 of the Ordinance which provide: —

"42. (3) All questions shall be decided by a majority of the votes of the practitioners present and voting and, in the event of an equality of votes, the presiding member shall have a casting vote.

(4) The meeting shall proceed to the election, from among the members of the Local Bar, of a Chairman and four Members to form the Local Bar Committee."

It will be seen that sub-section (3) speaks of "votes of the practitioners present" while sub-section (4) speaks of "election from among members of the Local Bar." It would seem that in regard to voting the respondent was of the mind that only principals could be regarded as practitioners for the purposes of sub-section (3) on the interpretation of sub-section (2) of section 39; and it would also seem that he would not go to the extent of saying that legal assistants were not eligible for election in view of the fact that there was a difference in the expressions used in the two provisions. The ruling that legal assistants were eligible to be elected to the committee has however, the effect that they are members of the Local Bar. It was therefore a conflicting result. I shall deal with this point fully later.

Mr. James Puthucheary, appearing for the applicants, has urged that the presiding member had no power to make the ruling and that, even if he had the power, the ruling was against the intent of section 39 of the Ordinance and the canon of construction. He points out that under sub-section (2) of section 42 the duty of the presiding member is only to preside over the meeting, and that by sub-section (3) at such meeting all questions shall be decided by a majority of the votes of the practitioners present.

Che Hendon, the fourth applicant, in her supplementary affidavit says, *inter alia*, "that the ruling was against the practice and conduct of all elections to the Johore Bar since 1947." There is no reply to the affidavit.

The point raised affected the right of any person present to be classified as practitioners for the purpose of voting. From the minutes of the meeting, the practitioners themselves gave different views on the effect of section 39 of the Ordinance. Under sub-section (1) of section 42 the meeting had to be held not later than 31st January.

In the circumstances of the case, I do not think it would be proper to impugn the necessity of making the ruling, although in the ordinary course of events the interpretation of any provision of law should be a matter for the courts. But this was a meeting of practitioners. The question concerned their profession and called for a ruling to be made at the time. The respondent had an unpleasant task.

I can only say that it is most unfortunate that such an important question affecting the right of some practitioners should have been raised at all at the very late juncture of a statutory annual general meeting. I doubt very much if the annual general meeting should be made the forum for the discussion of the effect of any law.

In raising the question, I have no doubt that Mr. Chelliah had the best intention, but it was, in my view, spurred at the wrong time and place.

As a matter for future guidance, I would urge that if any practitioner has any doubt in the interpretation or operation of any provision of the Ordinance, he should lay it before the Bar Committee which should in turn take it up with the Bar Council. No practitioner can be heard to say that he is unaware that the Bar Council has the power to examine and, if it thinks fit, report upon current legislation and any other legal matters submitted to it, or to make recommendations to Government as to the desirability of introducing any legislation: see sub-section (1)(c) of section 45 of the Ordinance.

It is common ground that a legal assistant employed by a firm of advocates and solicitors is a practitioner for the purpose of section 2 of the Ordinance, and in fact practices in the State. The question to be determined is whether he is a practitioner within the ambit of sub-section (2) of section 39 and consequently for the purpose of Part IV of the Ordinance which relates to the Local Bar Committee, Bar Council and Bar Associations and contains provisions relating to voting and election.

As to the general effect of sub-section (2) of section 39 of the Ordinance, learned counsel for the applicants has urged that the sub-section does not give an exhaustive definition and cannot be taken as restrictive in intent, having regard to sub-section (1) where the word "practitioners" occurs. He contends that this word should be taken as related to the general definition of the word appearing in section 2 of the Ordinance. In this section the word is defined as meaning an advocate and solicitor in possession of a valid certificate to practice issued under section 25 of the Ordinance.

Mr. Smith, appearing for the respondent, maintains in effect that sub-section (2) of section 39 is a definition provision and is therefore exhaustive, since it describes who are the practitioners for purposes of Part IV of the Ordinance and should be construed within the framework of that sub-section.

Mr. Menon, the secretary of the Bar Council and Mr. Ajaib Singh of the Attorney-General's Chambers, who have been called to assist the court, give more or less the same views as those of learned counsel for the applicants. Sub-section (2) of section 39, they say, is presumptive and should be regarded as extending the meaning of the expression "practitioners practising in the State" appearing in sections 40 and 41 of the Ordinance.

Arguments as to whether sub-section (2) of section 39 is presumptive or exhaustive have centred on the word "deemed" appearing in the sub-section. Many authorities have been cited. But I consider it would be in the interest of everyone concerned that the question should be approached on the hypothesis that the sub-section, as urged by learned counsel for the respondent, is exhaustive.

The sub-section may be broken down to read as follows. For the purpose of Part IV of the Ordinance, a practitioner is deemed to be practising in a State (a) if he practices and maintains an office in a State; or (b) if any practitioner with whom he is associated in

partnership practices and maintains an office in such State.

There is a proviso which relates to Johore. It says that a practitioner who was a member of the Johore Bar on 8th December, 1941, shall be deemed to be practising in the State whether or not he or any of his partners maintains an office in that State. It clearly does not apply here.

Paragraph (b) too has no application as a legal assistant is clearly not a practitioner associated in partnership.

The determination of the question depends on paragraph (a) particularly on the words "maintains an office."

It is argued that although a legal assistant practices in the State he does not fit into the requirements of those three words, because as an employee he cannot be said to be maintaining an office, and the office is maintained by his principal. Reliance for this argument has been placed on *Way* v. *Bishop*,[1] and in particular on the passage cited below.

In that case by a partnership agreement made between two solicitors one of them undertook "not to practise" within a specified limit after the determination of the partnership. The partnership having been determined, this partner became employed as a managing clerk to a firm of solicitors practising within the limit. It was held that merely acting as a managing clerk was not "practising as a solicitor" and, therefore, the solicitor was not in breach of the partnership agreement. Russell L.J. at page 414 said: —

"In my opinion, the natural meaning of the words 'practising as a solicitor' is that the man will act as a solicitor in such circumstances that the relationship of solicitor and client will arise as between himself and the person whose affairs he is transacting. In my opinion, the phrase 'practising as a solicitor' connotes a person who is a principal; it connotes a person who has clients; it connotes a person, in short, who has a practice, and the words are not apt words to describe the position of a person who is acting as the servant of another who is practising as a solicitor."

I am inclined to the view that the case has no application as it arises from the consideration whether a solicitor employed as a managing clerk is actually practising his profession. The decision reached in that case as far as I can see was based on different principles. The consideration here is whether a person, who is in fact for general purposes a practitioner, is excluded from the operation of a particular part of the law affecting his profession by what is described as a definition provision for that part.

One of the main principles to bear in mind in regard to legislation is that express and unambiguous language appears to be absolutely indispensable in statutes passed for the purpose of imposing a tax or charge and for, what is relevant to this case, conferring or taking away legal rights whether public or private. See *Craies* on Statute Law, 5th edition, page 106. So, in this case, if it is intended that a legal assistant practising in a State should have no right to vote at the annual general meeting of practitioners in the State, by reason of his being under the employ of a firm of practitioners or his being not a principal in the practice of his profession, then there should be plain and unambiguous provision. He cannot be deprived of that right by mere implication or inference.

It will be observed that nowhere in the Ordinance do the words, "principal" and "assistant" occur, as in the ruling, in relation to practioners practising in a State.

In regard to the wording of sub-section (2) of section 39, the practitioners themselves have been uncertain as to the intent of some of the words and expressions and the relationship of one with the other. The difficulty in getting the intent of the provision has been such that, according to, if I am not mistaken, Mr. Smith, at one time it was ruled that voting at an annual general meeting should be by firms of practitioners, in cases of partnerships.

In relation to this difficulty I should mention that in interpreting a provision, it has often been held that where it is capable of two meanings, the court will prefer the meaning more preferable to the subject.

From the tenor of the argument of learned counsel for the respondent, the word "maintain" in its application to an office appearing in the sub-section should connote the payment or furnishing the means for keeping up an office. But this is only one of the meanings of the word appearing in the *Oxford Dictionary*. It has many other meanings. In my opinion the word should not be only so equated. The four walls of a practitioner's office, even if they contain such material trappings as a desk, chair and some law books, will come to naught if no service is rendered.

If indeed it is intended that a legal assistant is required for the purpose of qualifying himself under that sub-section to have the paraphernalia of an office in that sense, I do not think that he should have any difficulty in overcoming that requirement. He can simply maintain a cubicle as his own office next to his place of employment, following more or less similar practice, which I believe to have been prevalent at one time but now fast dying out, employed by certain legal firms. Branch offices were set up and they were then run by persons who described themselves as clerks.

Even if the word "maintain" is to be taken in terms of financial or material benefits to an office, I am of the opinion that a legal assistant by providing professional services is, in effect, supplying such benefits to the office. Like a partner in a firm of practitioners he is a source or one of the means of maintaining an office. If it is said that in such a case the legal assistant is not fully maintaining an office, the same can be said of any of the employing partners. It cannot be denied that funds obtained by the firm for the maintenance of the office are partly derived from the services supplied by the assistant.

The word may connote just keeping up or carrying on an office. It may also connote the habitual provision of professional services. One of the meanings given priority in the *Oxford Dictionary* to the word is "habitual practice". I doubt very much if it can be said that a legal assistant as a practitioner under the employ of a firm does not habitually practise his profession.

Considering the two principles mentioned above, I cannot see anything in any of the provisions of the Ordinance which is intended to exclude a legal assistant as such from the operation of Part IV of the Ordinance. Assuming that sub-section (2) of section 39 is ambiguous or capable of two meanings, I cannot see from the wording as it stands the meaning that a legal assistant is a practitioner for the purpose of that sub-section should not be favoured.

Considering all the connotations of the word "maintain" I am of the view that the legal assistant by reason of his supplying professional services in a firm does maintain an office in the sense intended by sub-section (2) of section 39 of the Ordinance.

In dealing with the conflicting effect of the ruling, it is necessary to set forth the scheme of Part IV of the Ordinance, as is relevant, which is briefly as follows:

Sub-section (2) of section 39 sets out the circumstances in which a practitioner is deemed to be practising in the State.

Section 40 says that such practitioners practising in the State exceeding ten in number are deemed to be a Local Bar — see also the definitions in sub-section (1) of section 39 where the expressions "practitioners practising in the State" occur.

Voting is by practitioners — sub-section (3) of section 42.

Election is from among members of the Local Bar — sub-section (4) of section 40.

The expression "practitioners practising in a State" occurs in the definition of Local Bar and in section 40 (and also in section 41 which relates to a combined bar). In sub-section (3) of section 42 the word used, however, is "practitioners". I am of the opinion that this is an inconsistency in drafting. The word is clearly intended to relate to "practitioners practising in a State" in the context of that part of the Ordinance, and consequently to members of the Local Bar. See also sub-sections (1) and (2) of this section where the word used is "members". It cannot be construed as practitioners generally. The respondent, however, in reference to the right of voting under sub-section (3) used the word "principals".

The respondent in his ruling did not directly say that legal assistants were not entitled to vote. He said that only principals were entitled to vote but assistants were eligible to be elected to the committee. It seems to me that he was indulging in a form of evasive language usually mastered by an experienced practitioner when dealing with a vexing question. There is no doubt that it was intended that legal assistants were not entitled to vote. But the qualification that they were eligible to be elected has the effect of nullifying that intention.

In order to follow the effects of the ruling in proper sequence, section 40 of the Ordinance should be set down. Other provisions which will be mentioned can be found elsewhere in this opinion. The section reads:

"40. Where the number of practitioners practising in a State or the number of practitioners practising in any two or more States have combined for purposes of this part of this Ordinance pursuant to section 41 thereof, exceed ten, such practitioners shall together be deemed to be a Local Bar for all purposes of this Part."

The ruling says you are eligible for election. Therefore you are a member of the Local Bar: see sub-section (4) of section 42. As a member of the Local Bar you are a practitioner practising in the State because section 40 says that only such practitioners can form the Local Bar. And you can only be described as such a practitioner by reason of your having been so deemed under sub-section (2) of section 39.

Putting it conversely, since you fall under sub-section (2) of section 39 you are a practitioner practising in the State (section 40). Since you are such practitioner you are a member of the Local Bar.

The law says voting is by practitioners (sub-section (3) of section 40) and election is from members. But you cannot be one without being the other. So, if you are eligible for election you have the right to vote and *vice versa.*

The first part of the ruling, therefore, is of no effect insofar as it affects to exclude a legal assistant from voting. The result is that the legal assistant is accepted as a person deemed to be a practitioner for the purpose of sub-section (2) of section 39.

I am tempted to stop here. But I suppose I have to have regard to the strenuous, not to mention rather querulous, arguments on the offending section 39, which has now become a cause of anxiety among practitioners, particularly legal assistants. I shall go a little bit further and deal with sub-section (2) of section 39 from the broad aspect.

Looking at this sub-section as a whole, it cannot be disputed that it contains very generous provisions. It covers a practitioner who may not in fact be maintaining an office in the State, as in the case of a practitioner practising in the State of Johore on 8th December, 1941. (This is of course intended to preserve an existing right at the time of legislation). It embraces a practitioner who is outside the State so long as he practices and maintains an office in a State, or is associated in partnership with a practitioner in the State. Having regard to these provisions, I am convinced that the sub-section as a whole should be given a liberal interpretation.

From this broad aspect and putting it briefly, I am of the opinion that for the purpose of the sub-section it does not matter in what manner a practitioner maintains an office in a State; it may be by way of keeping it up, preserving it, rendering service or giving general assistance; may be for himself, for the partnership or for his employing practitioner so long as it is connected with his practices in the State. It does not make a difference whether the office is his or his principal's as the requirement is that he should maintain an office.

Considering all the above, there can only be one conclusion. A legal assistant practising in the State

who is under the employ of a firm of practitioners practising and maintaining an office in a State is a practitioner for the purpose of the sub-section and consequently for the purpose of Part IV of the Ordinance. I so determine accordingly.

I do not think any useful purpose will be served by making a declaration sought in the second part of the application. The annual general meeting of 26th January, 1969, is an event of the past which cannot be revived or recaptured by the declaration sought. In any case the ruling does not effectively operate to deprive the applicants of their right to vote, and by the ruling there should have been nothing to prevent them from voting during the meeting.

Order accordingly.

Solicitors: *Skrine & Co.; L. A. J. Smith.*

WONG AH GAN v. CHAN SWEI YUEH & ANOR.

[C.A. (Wee Chong Jin C.J. (Singapore), Tan Ah Tah & Chua JJ.) February 9, 1970]

[Singapore — F.C.C.A. No. Y24 of 1969]

Negligence — Road accident — Motor cyclist not using crash helmet — Deep-seated brain damage — Damages.

Damages — Head — Brain injury — Deep-seated brain damage — Prospective earning — Loss of.

Road Traffic — Accident — Whether there is a duty to minimise effect of injury.

The first respondent was involved in a collision with a motor car driven by the appellant. At the time of the accident the first respondent was riding a motor cycle and was not wearing a crash helmet, and as a result he suffered deep-seated brain damage. The learned trial judge held that the appellant was negligent and awarded $115,000 as damages. On appeal it was argued: (i) the learned trial judge should have found as a matter of law that there was a duty on the first respondent to mitigate the damages flowing from the appellant's negligence and that the failure to wear a crash helmet constituted a failure to discharge that duty; (ii) the quantum of damages awarded to the first respondent represented a wholly erroneous estimate of the amount which ought to have been awarded to him.

Held, dismissing the appeal: (1) in law there can be no duty on a person to minimise the effects or probable consequences of any injury he may suffer, but which he has not yet suffered, through the negligence of another. For a motor cyclist to ride a motor cycle without a crash helmet cannot as a matter of law constitute a failure on his part, acting as a reasonably prudent man would act to foresee that he might cause harm to himself;

(2) having regard to the circumstances of the case the trial judge's estimate of loss of prospective earning was not wholly erroneous and therefore the global award of $115,000 was also not wholly erroneous.

COURT OF APPEAL.

K. E. Hilborne (*M. P. D. Nair* with him) for the appellant.

D. H. Murphy for the respondents.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the court): The first respondent, who is the first plaintiff in the action, was involved in a collision on the 21st June 1966 with a motor car driven by the appellant, the defendant in the action. At the time of the collision the first respondent was riding a motor-cycle and was not wearing a crash helmet. He was then seventeen and a half years old and in the first year of the Higher School Certificate class in the Arts stream after having obtained a Grade II pass in the Senior Cambridge Examination. In his school report for 1965 his teacher said "Should try for Grade I. Capable of better work".

As a result of the accident he suffered personal injuries. When admitted into hospital shortly after the accident he was in a state of coma, reacting only to pain. He had fractures around the wrist of both arms. An X-ray of the skull revealed no fractures, but although during the next few days his coma became lighter he did not recover consciousness and after ten days he again lapsed into a deep coma. Further tests were made and though no blood clot was found the electro-encephalogram suggested deep-seated brain damage.

The consultant neurologist advised conservative treatment and not brain surgery. A tracheotomy was done for breathing and gastrostomy for feeding. Eighteen days after his admission into hospital he regained consciousness. Twenty six days after the accident the consultant neurologist reported that he was "unable to speak due to motor asphasia and the picture was consistent with vascular involvement of the left side of the brain which was of a degree that although some further improvement would be possible, a residual defect would be likely".

He continued to improve steadily though slowly but when he was discharged from hospital on 3rd August 1966 he was just able to understand speech and to take food by mouth. At that date he weighed about 75 to 80 lbs. as against his pre-accident weight of 120 lbs. and he could not utter a word. For the next few months he had to be spoon fed and a servant had to be employed for the first nine months to look after him and to attend to his needs.

According to his father, after six months he was able to talk about 20 to 25% of his normal self but was unable to read or write. The father had to teach him to read and write and it was like teaching a four year old child. His memory had gone and he had difficulty in remembering what he had been taught. His father work ceaselessly and patiently to rehabilitate him and about eighteen months after the accident sent him to classes run by the Adult Education Board to continue his studies as a student in the Higher School Certificate class. However, as he could not keep up with the class and his work was so bad, the father on the advice of doctors, discontinued his attendance. Since then his father, who is the secretary of the Automobile Association of Singapore, has taken him regularly to the father's office and allowed him to do some typing work on an unpaid basis.

The medical reports of three specialist doctors who examined him show the effect of the head injury. We reproduce these reports hereunder: —